

**Mortgage Broker Practices Act Rulemaking**  
**Panel Meeting Minutes**  
June 15, 2006

Panel members present: Chuck Cross, Catherine Mele-Hetter, Laura Kiel, Jeff Berglund, Jeffrey Lorsch, and Adam Stein

Absent: Rich Bennion

## **1. Welcome and Introductions**

Chuck introduced the Panel and other DFI staff present.

## **2. Meeting Format and Protocols**

Chuck said this is becoming routine for everyone.

## **3. Document Status Report – Deb Bortner**

Deb said anyone can go to the DFI website and look at the document entitled MBWACv20060615, which is the latest version of the WAC. Any changes from the last meeting are highlighted in yellow. Everything in black or not colored has already been read, reviewed, and approved. There is a Scope change from last time that the Panel needs to look at and approve or not approve. Most other changes are in the licensing area.

## **4. Reading and Assignment of Public Comments to Date – Deb Bortner**

We received about eight comments this time. Most of them are questions. The major question is what steps do we have to take to have our loan originators be in compliance by January 1, 2007? That question is answered in the draft. That same person wanted to know if their 20 hours of continuing education taken in Oregon will be accepted in Washington. We have also dealt with that question in the rules. They wanted to make a comment on the question about how many clock hours of continuing education will be required. The answer is the continuing education requirement will be in the form of approved courses. They are concerned that it is human nature for people to gravitate toward the lowest cost and fastest solution. The commenter wants a standard set in clock hours. All other comments we have already dealt with in the rules so far.

## **5. Sub-Panel Reports**

**Licensing Sub-Panel – Adam Stein** – They went through 47 pages of licensing language. The Sub-Panel made it through all of it and adopted most of it. They came up with some new questions also. Today we will review everything so far in this draft.

Chuck – Chuck heard the Sub-Panel feels they are on target to meet the June 30 deadline.

**Examination Sub-Panel – Cindy Fazio** – At their last meeting, the Exam Sub-Panel was able to look at comments from the Misc. Sub-Panel who had reviewed their work. They are now sharing their work with the other Sub-Panels. Cindy sent a large packet of documents to the examination group. This Sub-Panel will definitely be on track to meet their timeline.

**Enforcement Sub-Panel – Laura Kiel** – They sent their work to other Sub-Panels for their input.

**Misc. Sub-Panel - Laura Kiel** – This Sub-Panel hasn't done a lot lately, because they will follow at the end to tie up some loose ends.

## **6. Work Session with Latest WAC Version**

### **a. Small Business Economic Impact Statement (SBEIS) - handout**

We are doing two of these. This one is for the mortgage broker companies. The other one will be for course providers and will be delayed for a couple weeks.

A copy of the SBEIS was distributed to the Panel earlier. Jeffrey Lorsch has reviewed it. The part that he raised questions about is on page 2, question 7. It requests the company estimate the cost for reporting. How can one specify time requirements if they don't have any details about what is being asked to provide? How does one determine the broker's costs of examination? After you have the examination, there may be additional costs to comply with that the broker can't determine. If we had some guidelines, it would be helpful. What does it take to review the exam with the company?

Chuck – Chuck brought a printout from the examination manual – manager's questionnaire. This is sent out to each manager before the exam starts. Chuck hasn't had a chance to review the entire exam manual yet. He thought this questionnaire would at least give us something to start working from. Would this give a company enough information to be able to guesstimate how much an exam would cost? Could we attach this to the SBEIS?

Catherine – The SBEIS will be posted on the website. We could put the questionnaire on the website also.

Chuck – The questionnaire is what we ask the company to fill out before we come in to examine. It doesn't give you an idea of how in depth the exam will be. The amount of loans we choose to examine will be different for each company.

Jeffrey – That's why it's difficult to estimate.

Laura – Are you asking people to complete this entire package now?

Chuck – No. We're asking them to complete the SBEIS survey. The exam questionnaire will give some guidance. If you are selected for an exam, you will have to complete the exam questionnaire.

Jeff – It is important to know that once someone has gone through an examination, they'll know how to keep their records into the future. Future examinations should be easier.

Catherine – We are supposed to be offering technical assistance also.

Laura – One thing that is missing in this financial oversight. Do you believe there will be some tangible or intangible benefit to you?

Catherine – This SBEIS is a statutory requirement. We need to find out how much it will cost small businesses. We're looking at recordkeeping, professional services, costs, and measure per employee how those costs will affect small businesses vs. large businesses. If there is a disproportionate impact on small businesses, we need to try to mitigate that cost through the rulemaking process.

Chuck – Do we have time for the panelists to take the SBEIS home and complete it with the help of the manager's questionnaire? That will give us a gauge of how well it works.

Deb – Yes, several of the Commissioners have completed it already. We have to file this with these rules on August 23, 2006. Before that date, we have to compile the data and write a report. We can give the Commissioners another week to complete it.

Chuck – He would suggest that the Commissioners guess on the high side. Exams should take 8-16 hours onsite and half a day of follow-up time. Once the entry questionnaire is filled out, the examiners come in, you give us the files we need to review, and we don't bother the staff much until the half hour exit review.

Chuck – Can we get comments back from the Panel by Wednesday, June 21?

#### **6.b. Outline of WAC Template – June 8, 2006 - handout**

Cindy – At the June 1 Panel meeting, we discussed options. The outline we are using now has mortgage brokers, designated brokers, and loan originators everywhere. The proposed outline organizes sections by topic.

Chuck – There will always be a table of contents in the beginning. The Panel is okay with changing to the new outline. Today's WAC version is not in the new format, but the version we see on June 29<sup>th</sup> will be.

**Good standing** – Good standing primarily appears in .265 of the statute. It says if a you have a main office license, you apply for a branch office and are in good standing, we will issue a branch license promptly. That forces us to come up with a definition of good standing.

There are a couple other places where we use good standing:

1. Narrow exemption of mortgage brokers for the company that is a subsidiary of a bank holding company and an affiliate of a bank, the company still holds a main office license, but their loan originators don't have to be licensed – providing they are in good standing.

2. To change a designated broker.

The definition was worked on by Adam Stein, Chuck, and Jim Brown. We are looking for enough approval today to get this into the draft in yellow highlighting for the June 29 Panel meeting.

Chuck reviewed the Good Standing draft.

Page 1 – first question - **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, or exempt mortgage broker?**

(3) Chuck – We may need to clarify. Chuck asked Cindy and Deb to insert the exact statutory site to talk about that special type of exemption.

Page 1 – second question - **What does good standing mean?**

In all circumstances, the mortgage broker needs to exhibit good character and fitness. This is lifted right out of the statute and copied into the rules. We have listed 11 different criteria. Chuck reviewed each one.

We have reduced this down to 11 criteria. DFI enforcement staff wanted more.

Jeffrey – #7 – He suggests we clarify that the cease and desist is by the agency, not a private matter between businesses.

Chuck – We will clarify that.

Chuck – There was some concern on #8.

Jeffrey – #8 - Do we need more evidence? Does that mean they can't do business? Do we need to say we are preparing a cease and desist? What's significant?

Adam – He has some suggestions for sidebars. You can categorize the types of complaints or list some numbers relative to their annual volume.

Chuck – We want to stay away from the numbers game. We did say if you haven't been notified of the complaint and had the opportunity to respond, you are not automatically not in good standing.

Chuck – Look at the next section about when we have to give written notification. If we say you've failed the good standing test, we give a specific reason. We have to contact you within 10 days. You have the ability to ask for a brief adjudicative proceeding to contest those matters.

Chuck – We have a lot of safeguards in place. This rarely comes up anyway.

Adam – #9 - He is concerned that we not give the agency license to say they haven't seen a company's books in ten years. We have the ability under #9 to make sure the agency hasn't allowed the company to deteriorate. He's not sure that needs to be in good standing.

Jeffrey – Just because you have an upside down balance sheet, there are other ways to back the company.

Chuck – He has to disagree. If there is an upside down balance sheet, that would not meet the good standing test.

Chuck – The good standing test is only applicable when you are adding branches or changing a designated broker. We still have the authority to deny a license. All this does is say, let's pause for a moment and not issue a license promptly. There's one of these 11 reasons why we should make sure the company is in good standing.

Laura – #9 – Laura agrees with Adam that you could have a good business but not always have a strong balance sheet.

Adam – Small businesses have peaks and valleys.

Jeffrey – The owner might lend the company. There is the ability to protect the consumer.

Adam – How often out of all the licensees do you deal with insolvency?

Chuck – Under the statute and existing rules, DFI can close your company for having an upside down balance sheet. This issue is clarifying that it is the regulator's role to determine if you should be opening additional branches if you have negative equity?

Laura – Laura agrees that if a company is in financial difficulty, they should not be opening new branches.

Chuck – Let's retain these items for now. Chuck will discuss this with the Director. We will note that the Panel continues to be concerned with #9 and the impact that might have on businesses.

Jeff – Suggested new language – “If the company remains insolvent for a period of time . . .”

Chuck – It means if the company is insolvent right now, and possibly facing bankruptcy, do we want them to expand?

As a further safeguard, we tried to incorporate some of the Administrative Procedure Act (APA) provisions. That's where all of your rights as a licensee exist. There is a brief adjudicative proceeding (BAP), which allows an expedited review of a specific matter. The Director appoints a presiding officer.

Adam – Who appoints the officer? Is it a neutral party?

Chuck – Most of the time, it is someone within the Department, but not within the Division. It is someone who is independent from the decision that was made. We know you are concerned with the independence. Even under the full blown APA, the Director has the ability to reverse the administrative law judge's decision.

Chuck – We don't have to put the brief adjudicative proceeding section in here. It's another option.

Adam – He likes the brief adjudicative proceeding idea, but he would like it to be someone outside DFI. Could we have someone outside DFI? An independent attorney?

Deb – She believes DFI has only used this BAP process once as far as she knows.

Chuck – This part is from Department of Licensing's adoption of the BAP.

Jeffrey – Can we put something in rules that the person does not come from DFI?

Chuck – The issues are:

1. Find someone outside the agency who is knowledgeable on the subject.
2. Quick turnaround time.
3. Some expertise under the APA.

Adam – He wants the person reviewing these cases to be as independent as possible and still make the process as expeditious as possible.

Whittier – We have lost context. It doesn't happen that often and the whole point is to get a decision made quickly.

Catherine – We'll try to change the language to add – “objective, third party outside the Division ...”

Page 3 – second question - **What Department determinations can still be challenged through a brief adjudicative proceeding?**

Chuck – Chuck wants to point out that he only included five areas.

Adam – What about something that happened in another state?

Chuck – That would be factual if your license was suspended, revoked, or restricted.

Chuck – If you failed the good standing test, we get to take a little longer than “promptly” to review your application. If your license was revoked in another state, we should pause and review the application.

Chuck – We will import this into rules for the June 29 Panel meeting and highlight the language in yellow. Add something about having the person appointed under the brief adjudicative proceedings being as independent from DFI as possible, and the continuing concern about #9.

**Rules Draft - Focus on the yellow highlighted portions.**

Adam – page 49 - **How does my loan originator's license become active?**

Adam - We have removed good standing, but we still have DFI right in the middle of every hiring of a loan originator.

Chuck – DFI is just acknowledging additional relationships. We are not approving or denying them.

Suggested - Change “requested” to “established.” End the sentence after “established.”

Suggested - Change “if” to “of.”

Chuck asked Catherine to rework the answer.

Page 2 – We made a modification under (3) **What is residential real estate?**

**(4) Does the location of the mortgage broker, the potential borrower, and the residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?**

Chuck is okay with what it is being changed to now. It says we have jurisdiction over a transaction if the borrower and the mortgage broker both reside in Washington State.

Jeffrey – If the property is in Oregon, we are now dealing with two regulatory bodies. It should be governed under one state or the other.

Chuck – Not every state has coverage for mortgage activity. Some states won’t take jurisdiction if the person is not located in their state. A Washington consumer may not have any rights in another jurisdiction.

Catherine – The law clearly states that the legislature intended to protect Washington consumers.

Deb – If we had a case against someone, and Oregon had a case against the same person, we would work closely with Oregon.

Jeffrey – He always thought this was location of property.

Laura – Without this protection, you could have a bad mortgage broker set up shop in Washington State and do bad business in other states.

Deb – The only states that limit their jurisdiction to residential real estate, only the property in their state, are the states that their definition of residential real estate is property in this state. Every other state she talked to that has an open definition of residential real estate like we do, will take jurisdiction if the consumer or the property is in their state.

Page 4 (a) – change “and” to “or.”

Change “are” to “is.”

Delete “both.”

Delete Chuck and Deb’s comments.

Page 3 – (2) - Chuck added a couple new examples.

(3) Deb has a comment asking if we want to say if the property is here and the mortgage broker and potential borrower are out of state, would we take jurisdiction?

Catherine – The courts have subject matter jurisdiction if the business was conducted in Washington.

Page 9 – Catherine – Took the “taking a residential mortgage loan application” and moved it under this definition. We added “For purposes of this definition.”

Page 10- (29) - Changed “discussing” to “negotiating.”

Jeffrey – Is it quoting?

Jeffrey – If someone is relaying information and it is not a transaction in process, you’re not dealing with a processor.

Adam – What about “The processor does not discuss or negotiate any terms other than those set forth by the loan originator?”

Jeffrey – One is reporting what is already in place versus establishing and trying to identify what the agreement is.

Adam – He’s okay with the way it reads right now.

Suggestion – Add “quoting or negotiating.”

Adam – The Licensing Sub-Panel will discuss again.

Page 11 – third paragraph - yellow highlight - Whittier asked if “in that person’s name” includes wholesale lending, and do we want it to?

Chuck – Whittier is raising a broader issue. Joe Vincent just wrote an interpretive letter on this issue. Chuck will review that letter. Whittier will talk to Joe.

Chuck to Cindy – Make a note to check with Chuck on this. Are we getting our arms around more than we intend to?

Catherine – This definition needs to be reworked. It has “person” too many times. It’s too confusing. Catherine and Cindy will re-work.

Page 12 – This is a movement, not a change.



Page 13 – Remove Chuck’s note. Rick St. Onge said the examinations section will add something about table funding.

Page 14 – We added “any loans covered by the Act” and “originated and” for consistency with the Consumer Loan Act.

Page 15 – Placeholder.

Page 17 – yellow highlight - Was it the intent of the Licensing Sub-Panel to always require a mortgage broker in a shared facility to have to pro-actively advertise, or when they advertise are we requiring them to clearly show the difference?

Adam – It was an attempt to show visible signage.

Chuck – Change the first “advertise” to “post” in the answer.

Jeffrey – We have virtual lenders, and now we’re telling mortgage brokers who have brick and mortar how they have to use signage. Jeffrey will review the WAC for other areas where signage requirements come up.

Cindy – Keep in mind that these issues are dealing specifically when there are relationships with real estate companies. The statute has identified special relationships with real estate locations.

Page 18 – There is a question added there. **“How do I become a designated broker?”**

Page 19 – (b) - Chuck has a problem with the requirement of “at least two year’s experience originating or processing residential mortgage loans.” It doesn’t seem to be what the statute set forth. He wants to leave it up to the Department to determine.

Adam – He wants to see it in definition. He would be in favor of it being tighter, not looser. Adam is in favor of practical experience.

Jeffrey – Chuck is saying that there are other backgrounds that would be suitable.

Chuck – He wants to make sure we aren’t keeping people from being designated brokers.

Chuck – We will add to the list.

Jeff – Send this back to the Licensing Sub-Panel. Cindy will ask Chuck for suggestions also.

Page 20 – Added a question. **What topics may be covered in the designated broker’s test?** Adam wants to look at what topics are on the test. Do we need questions on Escrow, Real Estate, or the Consumer Loan Act?

Chuck – Review the list again.

Page 23 – first and second questions – **If I fail the designated broker test, may I take it again?** And - **How soon after failing the designated broker test may I take it again?**

Chuck needs to understand why we care if someone takes the test again right away.

Page 23 – second question – Should say “designated broker” not “loan originator.”

Adam has a concern that people will take the test until they get lucky enough to pass it without restudying.

Whittier – He thinks the test takers are not likely to see the same question again. They will also have to pay the fee again.

Jeffrey – If after two tries and not passing and not knowing the material, we want you to study to learn it.

Chuck – He is less concerned with this for designated brokers. He is more concerned with it for loan originators.

Chuck took a vote to see what time requirement the Panel wanted:

- After failing the test for the third time, you must wait ten business days to retake the test.
- Same requirement for designated brokers and loan originators.

Page 24 – yellow highlight - Chuck doesn't think the answer works within the context of reciprocity.

Suggested language – “If the department accepts what the other state's criteria is, and the other state has said the course is okay, we will accept it.”

Chuck – Catherine will re-do the answer.

Page 24 – bottom of page – G. MORTGAGE BROKER BRANCH OFFICES.

Jeffrey – The point of having a dba is that is how you present yourself to the public. What is the point of having a dba if you have to give both names?

Chuck – He doesn't see the purpose of having a dba if you can't use it. We need to either say you can't have dbas or say you can use them. This says you can only advertise as ABC Mortgage dba XYZ Mortgage.

Whittier – This gets nasty very quickly with branches. You can end up with a branch carrying only the branch name with no relationship to the parent company. The consumer has no idea who they are dealing with. They are stranded if the branch goes away.

Jeffrey – They can go do DFI, Dept. of Revenue, or the Secretary of State to find out that information.

Chuck – What if we require them to use the whole company name on any file documentation or official documents?

Jeffrey – There is not enough room to write all of that information on the forms.

Laura – The Act is overwhelmingly for the protection of the consumer. She's all for having clear definition for the consumer in advertising if there is a relationship.

Adam – He wants to make sure that the borrower is clear who they are dealing with.

Chuck – How about every time you only use your dba, you also have to use your license number?

Adam – He's okay with that. The license number is an easy fix and belongs to only one entity.

Chuck – Suggested language – last sentence of the first answer - “You may not use your trade or dba name unless accompanied by your license number.”

Jeffrey – Update the language and keep it highlighted in yellow for the next meeting.

Page 25 – first question – **Does my branch office have to be a physical location?**

Jeffrey – We're saying a branch needs to be a physical office.

Chuck – It doesn't say that it needs to be a physical office that customers can visit. It just says it has to be in existence. It can't be a post office box. We need to be able to find you.

Jeffrey – For clarification, maybe we should say mailing addresses do not mean the same.

Cindy – The license application requires a physical address and also for a branch.

Page 31 – fourth question - **May my mortgage broker license be located outside of the United States?**

Adam – How do you make an enforcement action to someone outside the U.S.?

Chuck – The answer is “no.”

We will rework the answer.

Page 36 – Cindy – fourth question – Should say “mortgage broker” not “loan originator.”

Page 37 – We will remove good standing from the top.

Page 37 – Remove (1) (c).

Page 37 – **May I still conduct my mortgage broker business if my license has expired?**

Jeffrey thought the time period was 30 days or at least less than six months.

Laura – Suggested language – “Existing loans must be completed within 60 days, unless extenuating circumstances apply.”

Chuck – Everything has been reviewed up until the third question on page 37 – **May I still conduct my mortgage broker business if my license has expired?**

## **7. Public comments**

**John Long –**

John has an email from Sue Williams. At the last meeting Chuck asked for a summary of state requirements for licensing. He will give that email to DFI staff.

John is the New Executive Director of PREMEA – Professional Real Estate and Mortgage Educators Association. It is a non-profit organization. They have the vast majority of all the approved entities that are conducting education in the state of Washington.

1. Good standing – John is very concerned about #7, #8 and #9. He is concerned about a substantial property right - the ability for a business to go forward in its business plans. A lot of net branches are not brick and mortar. Before there has been an adjudication, there is a prejudice. It will slow down or delay the licensing because of concerns. There should be further safeguards. There should be an expedited proceeding to resolve those complaints that are pending.

2. Brief adjudicative proceeding – It sounds like the Department is creating the ability to do a brief adjudicative proceeding. Does that preclude you from availing yourself from a full adjudicative proceeding?

Chuck – No.

John – Okay then.

Chuck – Good standing gives DFI the right to have longer to look at the application. Our Assistant Attorney General (AAG) is not sure if you do or do not have rights under the APA just because you failed the good standing test. That would be tested under the APA whether this rule was written or not. In addition to all that, we are giving you the rights to a brief adjudicative proceeding.

Chuck – The good standing standard is only used for applying for a branch, changing your designated broker, or applying for that specific exemption.

Chuck – Good standing is a term that the legislature created, and says we need to define.

**John Wilde –**

Trade name and dba – He is a sole proprietor. He can't see himself writing out his entire name on everything he does. We should clearly define the difference when someone is a sole proprietor. Can't we say if it is a branch, they must say they are affiliated with the parent company?

Questionnaire – Talked about the list of things for question #5 and how much that would cost. Chuck said we would be given a manual. This should be a great opportunity to insert this list in the manual saying this is what to expect when you are audited.

Excel sheet links – Jeff said there is a link where you can start inputting the data that will be required. Where is that link? He didn't even know about having to make a list until now. Where can he get the form to start entering data so he can catch up?

Chuck – This exam manual will be on the DFI website any day now. You can click on the Excel link, and it will open up for you to use.

Show me the source of where the test questions came from. Shouldn't there be a bibliography in the table of contents?

Chuck – We will list Acts and organizations. That will already be done by the Code Reviser's Office when the rules are done. It will list the statutory support.

Chuck - Test – It makes sense that when we get the test questions up on our website, we will list the statutory site of where the answer came from.

Brief adjudicate proceeding – He thinks using an attorney who works for DFI doesn't seem to be fair. When the recommendation gets back to the Director, he can overturn it anyway. What's the point of having the brief adjudicative process?

Eleven points of good standing - #8 – Can we define "serious" and "significant?"

Jeffrey – The list might not be inclusive.

He had trouble keeping up with documents Chuck and others were referring to. You move fast, and it's hard to keep up with the pages on the TV monitors.

Page 9 – WAC draft - top of page – "and that is not treated as an employee by the other for purposes of compliance with federal income tax laws." Shouldn't we also know what the L & I criteria is for an independent contractor?

Jeffrey – You want the following words inserted? "and states L & I requirements ...." The purpose of this document is not to tell people how to determine who is of what status, how to file tax documents, set up corporations, etc.

John just thought it might be helpful to have some explanation about independent contractors.

Mortgage Broker Rulemaking Minutes

June 15, 2006

Page 14 of 14

Adam – There are a number of different tests you can use.

Adam – That sounds like an interesting topic for continuing education.

Catherine - The problem is if we put it in our rules, and L & I changes their way of doing business, we don't want it in rule.

Chuck – This was imported directly from the statute.

Page 9 – yellow highlighting - bottom of page - John - “includes soliciting” – This says he also has to hand someone his disclosures when he gives them his brochure or business card.

Chuck – That's a very good point. We need to think about that.

John - Can you have hyperlinks to Reg X, etc.?

Chuck – We can't do hyperlinks within the WACs. They are published by the Code Reviser's Office.

Chuck – We can have hyperlinks on our website though.

John - He appreciates the time we are taking to do this.

Chuck - We haven't forgotten about course provider issues. We are definitely thinking about it.

Catherine – Can we have the next Panel meeting from 1:00 -5:00 p.m. with nothing else except going through the WAC? We need to get licensing finished.

Adjourned 5:00